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Promotion and protection of human rights

Missing persons

Report of the Secretary-General

Summary

In its resolution 65/210 on missing persons, the General Assembly requested the Secretary-General to submit to it at its sixty-seventh session a comprehensive report on the implementation of the resolution, including relevant recommendations. The present report has been prepared in accordance with that resolution.

* A/67/150.



I. Introduction

1. In its resolution 65/210 on missing persons, the General Assembly requested the Secretary-General to submit to the Human Rights Council at its relevant session and to the Assembly at its sixty-seventh session a comprehensive report on the implementation of the resolution, including relevant recommendations. The present report is submitted pursuant to that request.

2. Further to the previous report on missing persons (A/65/285), the present report outlines the implementation of measures relating to (a) the prevention of persons from going missing; (b) mechanisms to clarify the fate and whereabouts of missing persons; (c) children; (d) the criminal investigation and prosecution of cases of missing persons; (e) forensic recovery and identification of remains of missing persons; and (f) the legal status of missing persons and support for families. The report sets out a number of conclusions and recommendations.

3. The report has benefited considerably from contributions received from Member States, intergovernmental organizations and non-governmental organizations in response to a note verbale dated 10 February 2012.¹ The contributions describe the implementation of measures to address not only the issue of missing persons in connection with armed conflict but also the issue of persons unaccounted for in other situations of violence and insecurity, including those who have suffered enforced disappearance. The report therefore reflects the latter group of measures, many of which do not differ significantly in crucial respects from those put in place for dealing with missing persons and could be used in both contexts.

II. International legal framework

4. International obligations to prevent and resolve situations of missing persons and enforced disappearance are based on international humanitarian and human rights law. A number of States stressed their commitment to such obligations in their contributions to the present report, including Armenia, Azerbaijan, Bosnia and Herzegovina, Chile, Colombia, Croatia, Guatemala, Mexico, Panama and Paraguay. Kyrgyzstan noted that it had determined the modalities of work for the interdepartmental commission on the implementation of international humanitarian law in 2010.

5. A range of rights related to international human rights law is relevant to the issue of missing persons, including the right not to be subjected to inhuman or degrading treatment and the rights to liberty and security of person; life; the acknowledgement of juridical personality; a fair trial; judicial protection; family life; and participation in the investigation and criminal process regarding the facts of

¹ Contributions were received from Armenia, Azerbaijan, Bosnia and Herzegovina, Chile, Colombia, Croatia, Grenada, Guatemala, Guyana, Kyrgyzstan, Lebanon, Madagascar, Mexico, Panama, Paraguay, Spain, Tajikistan, Uruguay, the International Committee of the Red Cross, the International Commission on Missing Persons and the Organization for Security and Cooperation in Europe. Grenada stated in its contribution that it had nothing to report at the time in relation to resolution 65/210. Guyana stated in its contribution that it had not experienced or participated in any form of armed conflict and therefore had not had any case(s) of missing persons during armed conflict. OSCE stated that it was not in a position to contribute as its scope of activities does not encompass the issues set out in resolution 65/210.

the victim's case. Furthermore, the right to the truth underpins the obligations of States to determine the fate and whereabouts of persons who are unaccounted for. That right first arose in the context of cases of missing persons in connection with conflict. The right of families to know the fate of their missing relatives is provided for in article 32 of the 1977 Additional Protocol I to the Geneva Conventions. In recent decades, the right to truth has been recognized as applicable to other gross violations of human rights, including enforced disappearances, and as being closely linked to a range of other human rights. It is now explicitly laid down in article 24(2) of the International Convention for the Protection of All Persons from Enforced Disappearance. The right to the truth implies knowing the full and complete truth about the violations and the events that transpired, their specific circumstances and who participated in them. In the cases of missing persons and enforced disappearances, it also implies the right to know the fate and whereabouts of the victim.

6. The entry into force on 23 December 2010 of the International Convention for the Protection of All Persons from Enforced Disappearance constitutes a significant normative development in international human rights law. There are currently 34 States parties to the Convention and, since the previous report on missing persons, 15 States have acceded to or ratified it. The Convention establishes that no one shall be subjected to enforced disappearance. It also establishes rights for victims and imposes specific obligations on States to prevent enforced disappearances and bring perpetrators to justice. Furthermore, the Convention establishes a monitoring mechanism, the Committee on Enforced Disappearances, which held its first session from 8 to 11 November 2011 and its second session from 26 to 30 March 2012.

7. The Advisory Committee of the Human Rights Council submitted a report on best practices in the matter of missing persons (A/HRC/16/70). The report provides a comprehensive examination of the legal framework and practices relating to the issue of missing persons.

III. Measures to prevent persons from going missing

8. States and other parties to an armed conflict are obliged to take all appropriate measures to prevent persons from going missing. Such measures may be legislative or institutional in nature and should ideally be adopted in peacetime to ensure they are in place before they may be required. Significant measures include enacting national legislation, producing and providing proper means of identification, the establishment of information bureaux, graves registration services and registers of deaths and ensuring accountability in cases of missing and enforced disappearances.

A. Enacting national legislation

9. States must incorporate their relevant obligations under international humanitarian law and international human rights law into domestic law. Enacting national legislation is essential for both preventing and addressing situations of missing persons and enforced disappearances, including by helping to ascertain the fate of missing and disappeared persons; ensuring the comprehensive collection and proper management of information; and realizing the right of the families of the victim to the truth and providing them with the necessary support.

10. Colombia, for instance, has adopted laws, amendments to laws, bills, circulars, decrees, directives and policies dating from 1991 to 2012 to address missing persons and enforced disappearances, such as (a) the 2010 law on remembrance of victims of enforced disappearance, which, *inter alia*, provides for the establishment of a national DNA database for missing persons, burials and restitution of remains, psychosocial support for families and memorials; and (b) the 2011 Victims' Rights and Land Restitution Law, which encompasses reparations for victims of the armed conflict since 1985 and their families, including missing persons. In Kosovo, the law on missing persons, adopted in 2011, is based on the ICRC Guiding Principles/Model Law on the Missing and, *inter alia*, provides for the right to know about the fate of missing relatives and requires the establishment of both a commission to implement the law and a central record on missing persons. In its contribution, Spain also provided detailed information about its Historical Memory Law, which recognizes the rights of and establishes measures for those who suffered persecution or violence during the Civil War and dictatorship.

11. ICRC has worked with a number of States, such as Argentina, Armenia, Bolivia (Plurinational State of), Guatemala, Lebanon, Mexico and Nepal, to develop draft legislation on issues related to missing persons. It is also conducting and supporting studies on the compatibility of the legislation of some States with relevant provisions of international humanitarian law. Such studies have been carried out or are in the process of being carried out, *inter alia*, in Bolivia (Plurinational State of), Kyrgyzstan, Lebanon, Mexico, the Philippines, the Russian Federation, Serbia, Tajikistan and Uruguay.

12. During the 31st International Conference of the Red Cross and Red Crescent, held in 2011, the importance of the inclusion of missing persons in the four-year action plan for the implementation of international humanitarian law was stressed. The fourth objective of the action plan invites States to consider enacting appropriate legislation or arrangements to ensure adequate participation and representation of victims and their families as well as access to justice and protection for victims and witnesses, especially women and children, in proceedings before their courts and in other transitional justice mechanisms concerning serious violations of international humanitarian law.

13. The International Commission on Missing Persons has been instrumental in advancing the issue of missing persons in the region of the former Yugoslavia. The International Commission, in conjunction with the Ministry of Human Rights and Refugees and the ICRC delegation in Bosnia and Herzegovina, issued a guide for families of missing persons that provides clear information regarding the legal framework governing missing persons in the country. In 2011, the International Commission issued a report entitled "Locating and identifying missing persons: a guide for families in Bosnia and Herzegovina", containing a review of the institutions engaged in the issue of missing persons, the rights of relatives and the process of locating, recovering and identifying missing persons.

B. Other preventative measures

14. During conflict, States have the primary responsibility for the production and compulsory use by their armed forces of such items as identification tags. The Uganda People's Defence Force distributed personalized identity cards and tags to

its personnel in order to facilitate the identification of military casualties and prevent or resolve cases of disappearance.

15. ICRC noted that a means of personal identification for minors is also important, as they are particularly vulnerable in time of conflict, notably in relation to forced recruitment. State authorities should provide means of personal identification to minors with a view to preventing their disappearance.

16. International humanitarian law requires the establishment of national information bureaux and grave registration services. Examples of national information bureaux can be found in Armenia, Azerbaijan, Iran (Islamic Republic of), Iraq and the United Kingdom of Great Britain and Northern Ireland. Croatia noted that joint research and the marking of possible graves of persons from Bosnia and Herzegovina and Serbia was undertaken following the conflict in the region. In Sri Lanka, a law was adopted in December 2010 to provide for the registration of deaths of persons reported missing.

IV. Measures to clarify the fate and whereabouts of missing persons

17. Effective measures must be taken to determine the identity and fate of persons reported missing. Such measures require that States ratify and implement relevant international and regional legal instruments. Other measures include tracing activities, coordination mechanisms, national institutions to address issues of missing and disappeared, non-judicial truth-seeking mechanisms and archives.

A. Tracing and restoration of family links

18. Tracing activities involve the collection of information about people who are unaccounted for and the circumstances in which they disappeared. ICRC conducts extensive tracing activities and maintains constant dialogue with relevant authorities to determine the whereabouts of missing persons.

19. ICRC and national Red Cross and Red Crescent societies also assist with the maintenance and restoration of links between family members during conflict through the Red Cross and Red Crescent Family Links Network. Other organizations continue to be involved in such activities, including the Office of the United Nations High Commissioner for Refugees and the International Organization for Migration. Agencies such as the United Nations Children's Fund and non-governmental organizations such as Save the Children UK, continue to cooperate with the International Red Cross and Red Crescent Movement in, for example, assisting unaccompanied children.

B. Coordination mechanisms

20. Parties to a former conflict may agree to take specific measures at the end of the conflict under the auspices of a neutral party. Such measures may include setting up coordination mechanisms to exchange information; providing mutual assistance in locating and identifying missing persons and in the recovery, identification and

return of human remains; and keeping family members informed about progress in resolving cases of missing persons.

21. The coordination mechanisms discussed in the previous report on missing persons, namely, in Cyprus and Kosovo, and the Tripartite Commission, have continued their work. Until 15 April 2012, the Committee on Missing Persons in Cyprus had exhumed the remains of 845 individuals from 582 burial sites located across the island and had identified 321 persons whose remains had been returned to their families. In Kosovo, the Working Group on Missing Persons, chaired by ICRC and comprising delegations from Belgrade and Pristina, continues to maintain dialogue and exchange of information. The effort to locate and identify the missing is now carried out primarily by the European Union Rule of Law Mission in Kosovo in cooperation with ICRC and the International Commission on Missing Persons. According to ICRC, as at April 2012, 4,240 cases of missing persons had been closed, including 1,370 cases where the persons were located alive, and 1,781 where they remained unaccounted for.

22. In the Middle East, the Tripartite Commission decided at its 34th session, held in November 2011, to further strengthen the process of gathering information on the possible location of burial sites, and agreed on the need to establish a concrete plan of action concerning future excavations. To date, the Tripartite Commission has resolved 316 cases of missing persons in connection with the 1990-1991 Gulf War, and 32 human remains have been repatriated from Kuwait to Iraq. Concrete steps were also taken in 2011 by the authorities of Iran (Islamic Republic of) and Iraq to implement the joint memorandum of understanding signed by both Governments in 2008 in relation to the 1980-1988 war between the two countries. From November 2011 to March 2012, the remains of 311 soldiers from Iran (Islamic Republic of) and Iraq, who went missing during the war, were recovered in the Al-Fao Peninsula. So far, 148 human remains have been repatriated from Iran (Islamic Republic of) to Iraq, and 47 from Iraq to Iran (Islamic Republic of).

23. Further to the above-mentioned coordination mechanisms, agreements on cooperation between Croatia and Serbia, and between Bosnia and Herzegovina and Croatia have facilitated the exchange of information on missing persons, the exhumation and identification of remains and their delivery to countries of origin, enabling progress to be made in solving cases of missing persons. Work to resolve remaining cases continues.

24. Kyrgyzstan entered into an agreement with other countries of the Commonwealth of Independent States to continue to search for soldiers missing from the 1979-1989 war in Afghanistan, including through investigations, exhumations and identification and expatriation of remains.

25. A tripartite coordination mechanism established by the authorities in Georgia and the Russian Federation and the de facto authorities in South Ossetia to exchange information to clarify the fate of people unaccounted for during and after the August 2008 hostilities, met five times between February 2010 and November 2011. The revival of dialogue between Georgian and de facto Abkhaz authorities resulted in the creation, in December 2010, of a mechanism similar to that established in relation to the 1992-1993 Georgia-Abkhazia conflict, and to the setting up of a forensic working group.

C. National institutions

26. National institutions, such as national commissions on missing persons, can play a crucial role in clarifying the fate of missing persons without discrimination and providing support to the families of the missing. Such mechanisms already exist in Argentina, Armenia, Azerbaijan, Bosnia and Herzegovina, Chile, Colombia, Costa Rica, Georgia, Iran (Islamic Republic of), Iraq, Japan, Kosovo and Panama, and work is under way in Lebanon and Libya to establish such national institutions. Bodies such as human rights commissions and ombudsmen may also be useful as they often have broad mandates to address human rights violations that could encompass the missing and disappeared.

27. In Armenia, the National Commission on Prisoners of War, Hostages and Missing Persons, *inter alia*, investigates cases of persons missing in the context of the Nagorno-Karabakh conflict.

28. In Colombia, the National Commission for the Search for Disappeared Persons is mandated to support and promote investigations into cases of enforced disappearance and coordinate the design and implementation of the national registry of missing persons, the national plan on the search for missing persons and the urgent search mechanism. Victims of enforced disappearances can receive reparations through the National Commission on Reparation and Reconciliation.

29. In Croatia, the Commission for Detained and Missing Persons and the Bureau for Detained and Missing Persons of the Ministry of Veterans' Affairs are involved in the search for missing persons. They have elaborated the Croatian search model for missing persons, which, based on international good practices, unifies all activities aimed at determining the fate and whereabouts of missing persons.

30. In Guatemala, a draft law provides for the creation of a national commission on the search for victims of enforced disappearances. The objective of the commission would be the design, implementation and coordination of search mechanisms, the establishment of a national missing persons registry and the promotion of the right of victims to comprehensive reparation measures. The law remains pending approval by Congress.

31. In Lebanon, efforts are under way to establish a national institute for missing persons, which shall, *inter alia*, carry out all tasks and activities related to the tracing of missing persons, including collecting, processing and managing all relevant information and creating a centralized and unified database.

32. In Libya, the Ministry for the Affairs of Families of Martyrs and Missing Persons was designated in 2011 as the governmental authority in charge of clarifying the fate and whereabouts of missing persons. Discussions are being held regarding its mandate, structure, objectives and working modalities.

33. In Mexico, the Programme of Support for the Relatives of Missing Persons assists in the search for missing persons, while mutual assistance between various authorities is provided for by law. In Panama, a special national commission to address the issues of relatives of missing and murdered persons during the military regime was created by presidential decree on 30 December 2011.

34. In Spain, the Office for Victims of the Civil War and Dictatorship provides information to individuals to enable them to exercise their rights under the Law of

Historical Memory and is responsible, inter alia, for coordinating the various relevant institutions that implement the law and for developing an integrated map on the locations of remains across Spain.

D. Non-judicial truth-seeking mechanisms

35. National and international non-judicial truth-seeking bodies constitute other valuable mechanisms to address the issue of missing or disappeared persons, including in the context of transitional justice processes. For instance, in Chile, the National Commission on Truth and Reconciliation, known as the "Rettig Commission" established in 1990, and the National Corporation for Reparation and Reconciliation, created in 1992, addressed cases of enforced disappearances. In Guatemala, the Historical Clarification Commission documented human rights violations connected to the internal armed conflict in the country and registered 6,159 victims of enforced disappearance.

36. In Nepal, bills have yet to be approved to establish a truth and reconciliation commission and a commission on disappeared persons, as provided for in the Comprehensive Peace Accord signed by the Government of Nepal and the Unified Communist Party of Nepal-Maoist in November 2006.

37. In Timor-Leste, a draft law is awaiting final approval on establishing the Institute of Memory, which will, inter alia, support the Government in matters relating to disappearances and missing persons, as recommended in 2008 by the former Commission for Reception, Truth and Reconciliation. In Yemen, a draft law on transitional justice and reconciliation is currently being discussed to provide for the establishment of a mechanism, inter alia, to trace missing persons and determine their fate.

38. At the international level, recent international commissions of inquiry and fact-finding missions have made recommendations to national authorities regarding measures to address situations of missing persons and the disappeared that include taking all feasible measures to locate and identify disappeared persons to determine their fate (see A/HRJ/19/69); establishing mechanisms to investigate cases of disappearances (see A/HRC/S-17/2/Add.1); encouraging all parties involved in the conflict to divulge any information they have on missing persons (see A/HRC/19/68); providing families with all relevant information on cases of disappeared persons (see S/2009/693); inviting the United Nations Working Group on Enforced and Involuntary Disappearances to visit the country;² revealing the names of those in custody and those who have died in custody in order to relieve the suffering of the relatives of the disappeared and, in the cases of those who have died, produce evidence of their deaths together with the precise whereabouts of their grave-sites; and granting adequate reparations to the victims or their families and taking all appropriate measures to prevent the recurrence of violations (see A/HRC/17/44).

² See the report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka, available from www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf.

E. Archives

39. The collection, protection and management of relevant information are essential components for addressing the issues of missing and disappeared persons. As set out in the updated set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102/Add.1), the right to know implies that archives must be preserved and States are required to ensure the preservation of and access to archives concerning violations of human rights and humanitarian law. On 24 and 25 February 2011, pursuant to resolution 12/12 of the Human Rights Council, the Office of the United Nations High Commissioner for Human Rights convened a seminar on the importance of archives as a means to guarantee the right to truth. The discussion focused on the preservation of archives and the right to the truth; using archives in criminal accountability processes; using archives in non-judicial truth seeking processes; and the placement of archives of repressive rule (see A/HRC/17/21).

40. In Azerbaijan, the national commission on prisoners of war, hostages and missing persons has centralized information relating to missing persons resulting from the Nagorno-Karabakh conflict into a single database. In 2004, the database was submitted to ICRC for analysis. The information therein is being clarified and the differences between this database and the ICRC database are being eradicated.

41. In Bosnia and Herzegovina, the Institute for Missing Persons, created by the 2004 law on missing persons, is required to establish a central record of missing persons, which will include and enable verification of all records pertaining to missing persons.

42. In a 2006 memorandum of understanding, ICRC, for the first time in its history, transferred its competencies and responsibilities for data management to Croatia, which has continued to improve its practices. In addition, a third edition of the "Book of missing persons on the territory of the Republic of Croatia", which was first issued in 2006 and lists the names of those who went missing in Croatia during the 1991-1995 conflict, was published in July 2012.

43. The need to ensure the development and proper management of archives pertaining to missing and disappeared persons also applies to transitional periods. In 2011, Swisspeace, a non-governmental organization based in Switzerland, carried out an assessment mission in Burundi to determine national capacities on archiving, data-collection practice and strategy in the context of current discussions on transitional justice processes.

44. In Guatemala, the Directorate of Archives of the Secretariat of Peace is reviewing files, such as the "Military Diary", which may cast light on past events. Efforts have also focused on the conservation, identification and management of the Historical Archive of the National Police with the objective of providing free and public access to the documents in digitized form. As at December 2011, access was available to 12 million of the 80 million pages held by the archives.

45. In Mexico, the creation of the National Registry of Data of Missing Persons, which will consolidate information on missing persons in electronic form and facilitate investigations of cases of missing persons, was approved by the Senate.

46. In Spain, the Documentary Centre of Historical Memory maintains and develops the General Archive of the Spanish Civil War and collects and manages

new relevant documentary material relating to the period of the Civil War to the promulgation of the 1978 Constitution.

47. Information collected by international criminal tribunals, such as that gathered during investigations carried out by the International Tribunal for the Former Yugoslavia on grave locations and exhumations, has also contributed to determinations of the fate and whereabouts of missing persons. For that reason, ICRC and the Office of the Prosecutor of the International Criminal Court agreed to conclude in early 2012 a general memorandum of understanding, according to which the Prosecutor undertakes to assist ICRC in the identification of material in its possession that could be relevant in determining the fate and whereabouts of missing persons.

V. Children

48. In its resolution 65/210, the General Assembly requested States to pay the utmost attention to cases of children reported missing in connection with armed conflicts and to take appropriate measures to search for and identify those children and to reunite them with their families. In its contribution, Colombia noted that the "Alerta Luis Santiago" bill before Congress will introduce measures to prevent the kidnapping and disappearance of children by addressing the problem at the community level and by creating a mechanism for the issuance of media alerts. Croatia stated that it pays special attention to children registered as missing persons and to other persons at risk. Most of the cases of persons who were minors at the time they went missing have been resolved, although 11 cases remain outstanding. In addition to the measures relating to children missing in connection with armed conflict, the "Alerta amber Mexico" programme was launched in Mexico on 28 April 2011. The programme will function as a warning mechanism in cases of disappearances of minors and will enable the authorities to address more actively the issue of trafficking in persons by the widespread dissemination of information about each case through multiple means, including the media, text messaging and e-mail.

VI. Criminal investigation and prosecution

49. Cases of missing persons and enforced disappearances involve conduct that may constitute criminal offences and may also, in certain circumstances, amount to war crimes or crimes against humanity. States have an obligation, clearly established in international law, to investigate and prosecute such conduct. Moreover, criminal investigations and prosecutions can help victims to realize their right to the truth if the findings of such investigations and prosecutions are made available to interested parties. In order to enable effective investigation and prosecution, violations of applicable standards of international humanitarian and international human rights law should be criminalized under national criminal law, and necessary investigative and judicial mechanisms should be established.

50. Article 3 of the International Convention for the Protection of All Persons from Enforced Disappearance provides that States parties shall take appropriate measures to investigate acts constituting enforced disappearance and bring those responsible to justice. A large number of States have introduced the crime of

enforced disappearance into their domestic legislation and others are taking steps to do so.³

51. Accountability is being pursued at the national level through the prosecution of cases of enforced disappearance, including at courts of the highest instance in countries such as Argentina, Bosnia and Herzegovina, Brazil, Colombia, Chile, the Democratic Republic of the Congo, France, Guatemala, Italy, Mexico, Nepal, Pakistan, Panama, Peru and Uruguay. In Chile, the Supreme Court of Justice has established that enforced disappearance is a serious breach of the Geneva Conventions, to which any amnesty or statute of limitations cannot be applied. The National Institute of Human Rights and the Public Ministry are tasked with bringing prosecutions against those allegedly responsible for enforced disappearances committed during the military dictatorship, and the Human Rights Programme, *inter alia*, aims to provide legal and judicial assistance to victims with regard to such prosecutions. To date, 249 officers have been convicted of serious human rights violations constituting crimes that occurred between 1973 and 1990, including enforced disappearances, of which 72 have been sentenced to imprisonment.

52. In Croatia, the complete documentation on all identified persons whose remains have been exhumed is delivered to the competent judicial authorities for action, including the International Tribunal for the Former Yugoslavia. Guatemala provided detailed information on the successful convictions in three cases of persons responsible for enforced disappearances during the internal armed conflict. In its contribution, Tajikistan described the investigation of cases regarding six missing Tajikistani nationals.

53. The crime of enforced disappearance has also been adjudicated at the international level. In the recent judgement in the *Gotovina* case before the International Tribunal for the Former Yugoslavia, the Trial Chamber examined the crime of enforced disappearance, finding that it constituted the crime of persecution under the Tribunal's statute.⁴ Furthermore, Pretrial Chamber III of the International Criminal Court recently authorized the commencement of the investigation by the Prosecutor into the alleged crimes committed in the territory of Côte d'Ivoire since 28 November 2010, including allegations of enforced disappearance.⁵ The International Commission on Missing Persons noted that it prepares expert depositions and testimony for use in international trials of international crimes upon the request of the parties to such trials, in which it endeavours to facilitate the use of DNA evidence.

³ Those States include Argentina, Armenia, Australia, Azerbaijan, Belgium, Bosnia and Herzegovina, Brazil, Burkina Faso, Burundi, Canada, the Central African Republic, Chile, the Congo, Croatia, Cyprus, Ecuador, Fiji, France, Germany, Guatemala, Indonesia, Iraq, Ireland, Italy, Kenya, Lithuania, Malta, Montenegro, the Netherlands, New Zealand, Nicaragua, the Niger, Norway, the Philippines, Panama, Portugal, the Republic of Korea, Rwanda, Serbia, Slovenia, South Africa, Spain, Switzerland, the former Yugoslav Republic of Macedonia, Timor-Leste, Trinidad and Tobago, Uganda, Uruguay, the United Kingdom of Great Britain and Northern Ireland and Venezuela (Bolivarian Republic of).

⁴ *Prosecutor v. Ante Gotovina et al.*, Case No. IT-06-90-T, Judgement, 15 April 2011, paras. 1831-1839, 1891.

⁵ *Situation in the Republic of Côte d'Ivoire*, Case No. ICC-02/11, Decision pursuant to article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Côte d'Ivoire, 3 October 2011, paras. 77-82.

VII. Forensic recovery and identification of remains of missing persons

54. In cases where missing persons are believed to be dead, the recovery, identification and dignified management of bodies or remains are essential and an important component of the right to the truth for the families of the victims. With regard to recovery and identification, the General Assembly noted in its resolution 65/210 that great technological progress had been made in the field of forensic sciences, including DNA forensic analysis, which can greatly assist efforts to identify missing persons.

55. Many countries, including Argentina, Australia, Brazil, Chile, Colombia, Cyprus, Georgia, Guatemala, Iran (Islamic Republic of), Iraq, Mexico, Peru, Portugal, Spain, the United Kingdom and the United States of America, have acquired highly specialized forensic services required for such investigations, including in the fields of forensic anthropology and forensic DNA analysis. Some of those countries have also taken steps to improve forensic procedures and management of human remains. For example, Argentina, with support from ICRC, has developed a manual on the use of DNA to identify human remains during criminal investigations. In July 2011, the authorities in Burundi organized, in collaboration with ICRC, a seminar on the management of human remains, during which legal, forensic and psychological experts exchanged practices.

56. In its contribution, Bosnia and Herzegovina provided detailed information on the legal and policy framework pertaining to the exhumation of remains, DNA analysis, the preservation of DNA records and the management and burial of remains. In Chile, the Medical Legal Service of the Ministry of Justice, *inter alia*, provides forensic expertise in proceedings involving the handling of remains. It has identified 138 missing persons and has developed a nationwide database with DNA samples from 978 relatives of victims. A forensic identification unit is currently undergoing international accreditation.

57. In Colombia, the implementation of a large-scale project has begun to compare fingerprints from data held in the National Civil Registry with autopsy reports on unidentified bodies. Over 5,000 matches have been made, enabling deaths to be confirmed and bodies to be located and returned to families. Colombia also outlined measures taken to improve forensic procedures and optimize the use of forensic pathology in cases of violations of international humanitarian law and international human rights law, including an internal directive of the medico-legal institute to ensure that unidentified remains and cases involving possible victims of human rights and international humanitarian law violations are handled by experts. Furthermore, Colombia conducted an official visit to Bosnia and Herzegovina to exchange experiences with the International Commission on Missing Persons and discuss new approaches to identifying victims.

58. Since 1995, the remains of 4,694 persons have been exhumed in Croatia, from which, as at 25 March 2012, 3,796 persons have been positively identified, including through the use of DNA analysis. One of the factors that contributed to the efficiency of the identification process was the implementation of the joint project for identification using the DNA analysis method, signed by the Croatian Bureau for Detained and Missing Persons and the International Commission on Missing Persons.

59. In Guatemala, collaboration between the Foundation of Forensic Anthropology, the Public Ministry and the National Institute of Forensic Sciences resulted in the identification of five victims of enforced disappearance. The National Institute of Forensic Sciences also carried out exhumations in coordination with the National Compensation Programme. In Iraq, the Government established the Mass Graves Department at the Medico-Legal Institute in Baghdad and has begun to build DNA laboratories.

60. In Kosovo, the Department of Forensic Medicine provides expertise in forensic medicine and medico-legal death investigations, including with regard to the exhumation of human remains related to the conflict in Kosovo and their return to families. The 2010 Law on Forensic Medicine regulates the working procedures of forensic practitioners. In September 2010, the International Commission on Missing Persons released a stocktaking report on the situation in Kosovo and recommendations relating to the reliability of earlier, non-scientific identification work are being followed up by the European Union Rule of Law Mission in Kosovo.

61. In Paraguay, the Ministry of the Interior and the Ombudsman Office entered into an agreement regarding the search, excavation, exhumation and identification of victims of enforced disappearance and extrajudicial executions. National authorities in Paraguay investigating cases of missing persons from the period 1954-1989 are cooperating with the Argentine Forensic Anthropology Team to provide coordination and advice regarding the exhumation and forensic analysis of remains for the purpose of identification.

62. In Spain, the 2011 protocol for the exhumation of victims of the Spanish Civil War provides forensic practitioners with a unified set of procedural and technical guidelines in line with best practices for the proper recovery, management and identification of skeletal remains of the missing.

63. According to ICRC, a growing number of forensic practitioners and institutions worldwide follow the recommendations and standards on forensic best practices as they apply to preventing and resolving cases of missing persons. In addition, a growing number of academic institutions and specialized non-governmental organizations are engaged in research and training on and the use of forensic science in the prevention and investigation of missing persons. Such developments have helped countries to improve their forensic capacities and have contributed to deepening regional and international cooperation in the field.

64. ICRC carries out humanitarian forensic operations where required by parties to armed conflicts, and assists a range of actors in the implementation of recommendations related to forensic sciences and human remains in the context of investigations of the missing. Such recommendations were developed at the 2003 International Conference of Governmental and Non-Governmental Experts on the

Missing and their Families, organized by ICRC.⁶ The Second World Congress on Psychological Work in Exhumation Processes, Forced Disappearance, Justice and Truth was held in Bogota from 21 to 23 April 2010. One of the outcomes of the meeting was the adoption of the international consensus on minimum principles and standards for psychological work in exhumation processes and forensic investigations in cases of enforced disappearance, arbitrary or extrajudicial execution. The text contains 16 minimum standards for action and good practice recommendations and seeks to raise the awareness of State authorities regarding the provision of proper care to the families of victims and the development of public policy in the area.

65. The International Commission on Missing Persons has developed a database of 89,086 relatives of 29,109 missing persons and more than 36,000 bone samples. It was able to identify 16,289 people who were missing in the context of conflicts and whose remains were found in hidden graves.

VIII. Legal status of missing persons and support for families of persons unaccounted for

66. The issue of missing or disappeared persons affects society in a number of ways, including because both the missing or disappeared persons and their relatives are victims. Families suffer not only due to the absence of their loved ones and the lack of knowledge about their whereabouts, but often also because of the multiple difficulties they face as a direct result of the disappearance. They have a range of humanitarian, political, judicial and non-judicial needs that can be at the international, regional, national or communal level. That facet of the issue of missing persons is becoming increasingly well recognized.

67. On 29 March 2012, the Committee on Enforced Disappearances held a thematic discussion during its second session on women, children and enforced disappearance that included a discussion on the importance of ensuring that the needs of women and children underpin any measures taken in respect of disappeared persons.

⁶ In that capacity, ICRC has been involved in local forensic capacity-building to resolve cases of missing persons as a result of armed conflicts and catastrophes in several countries and areas, including Afghanistan, Argentina, Armenia, Azerbaijan, Bolivia (Plurinational State of), Bosnia and Herzegovina, Brazil, Burundi, Chile, Colombia, the Congo, Côte d'Ivoire, Cyprus, the Democratic Republic of the Congo, the Gambia, Georgia, Guatemala, Haiti, Honduras, India, Indonesia, Iran (Islamic Republic of), Iraq, Kosovo, Jordan, Kenya, Kuwait, Kyrgyzstan, Lebanon, Libya, Mexico, Myanmar, Nepal, Nigeria, Pakistan, Panama, Peru, the Philippines, Portugal, the Russian Federation, Solomon Islands, Spain, Sri Lanka, South Sudan, the Sudan, Timor-Leste, Uganda, the United Kingdom, the United States, Uruguay, Venezuela (Bolivarian Republic of) and Yemen. ICRC also fosters local, regional and international communication, coordination and cooperation between forensic institutions and agencies as well as the standardization of forensic procedures applicable to the search for and recovery, identification and management of human remains.

A. Understanding the needs of families

68. Because people react to loss in different ways and require differing types of support, ICRC recommends conducting family needs assessments in each case of a missing or disappeared person in order to identify needs and to assess the level of response required and the existing capacities to address those needs. Drawing on its experience in Ethiopia, Guatemala, Kyrgyzstan, Nepal, Sierra Leone, Sri Lanka, Timor-Leste and the North and South Caucasus regions, ICRC produced guidelines to develop multidisciplinary family needs assessments with the aim of ensuring a contextualized and comprehensive understanding of families' needs. Upon finalization of the assessments, ICRC usually engages in a confidential dialogue with the concerned authorities regarding the identified needs, and makes recommendations to meet those needs. When circumstances allow, it also produces public reports on the assessments in order to mobilize other concerned actors. ICRC is currently assessing the needs of the families of missing persons in Iran (Islamic Republic of), Lebanon and Senegal.

B. Addressing the needs of families

69. The authorities in each context bear the primary responsibility for addressing in a holistic manner the material, financial, psychological and legal needs of the families of missing or disappeared persons. At the 2003 International Conference of Governmental and Non-Governmental Experts on the Missing and their Families, a number of specific needs of families were identified, ranging from the need to know; commemorative rituals; economic, financial, psychological and psychosocial support; protection against security threats; recognition of the suffering experienced; and access to justice.

70. However, as a result of gaps in legislation and administrative obstacles, families often have no access to social benefits and pensions and are prevented from exercising their rights under property and family law. First, the legal situation of missing or disappeared persons should be clarified in domestic law, including through provisions for the person to be declared absent or missing. In Bosnia and Herzegovina, competent authorities may issue provisional certificates on the status of missing persons to enable families of missing persons to exercise their rights to financial benefits. In Colombia, a bill before Congress aims to create the possibility for families to seek a declaration of absence for a disappeared person, which will allow them to receive financial, tax, procedural, labour, health and education benefits with retrospective effect. In Guatemala, although a disappeared person may currently be declared dead and the finding entered in civil and property registers, the Guatemalan Committee for the Implementation of International Humanitarian Law is preparing a draft bill on absence and presumed death owing to enforced disappearance. In Madagascar, the 1962 Ordinance No. 62-003 provides for a declaration of absence to be made for missing persons.

71. In some States and areas, such as Armenia, Azerbaijan, Croatia, Kosovo, Kyrgyzstan, Nepal, Serbia and Timor-Leste, victims have been granted specific social and financial benefits either by amendments to existing domestic legislation or by specific provisional decrees. Such benefits include pensions for the families of missing soldiers, financial and symbolic reparations, psychosocial support, reduced health-care and tuition fees, child allowances, food assistance, loans and interim

relief. In Chile, the relatives of disappeared persons are eligible for financial compensation, financial assistance for education and health and legal assistance in civil law matters. Families are accompanied in relation to court orders for exhumations, burials and the restitution of remains, while the costs of investigation procedures and funerals are covered by the State. Chile has also implemented a variety of measures addressing memory and reparation for the families of victims.

72. In Colombia, legislation provides for the right of families to receive information regarding search, exhumation and identification processes, reparations and psychosocial support. Work is being undertaken to establish a network of assistance for victims. With particular regard to those children with both parents missing, judicial authorities will grant custody to a relative under the Colombian Family Welfare mechanism.

73. In Guatemala, the National Compensation Programme enables different forms of redress to be provided to the families of enforced disappearances. Since 2008, financial compensation, material restitution and symbolic reparations have been granted to victims of the internal armed conflict, including enforced disappearances.

74. In 2011, Kosovo adopted a law regulating the status and rights of martyrs, invalids, veterans, members of Kosovo Liberation Army, civilian victims of war and their families. The law also regulates the status, rights and benefits of missing members of the Kosovo Liberation Army and their families.

75. In Mexico, social assistance and psychosocial and legal support can be provided to families of missing persons through the Programme of Support for the Relatives of Missing Persons. The Support Centre for Missing and Absent Persons also provides support to victims by psychologists, social workers and doctors.

76. Spain provided detailed information on the laws governing social assistance and protection for victims of the Civil War, including the provision of economic benefits to those injured during the war, the recognition of pensions, medical and pharmaceutical care and social assistance for relatives of victims and the payment of compensation for people killed or disabled. The Government also provides grants for activities related to the recovery of historical memory and recognition of victims.

C. Accompaniment

77. ICRC is developing a new approach to address the needs of the families of missing. Accompaniment operates on the premise that families can be helped through empathetic relationships and mutual support, and by establishing links between families and the persons and organizations providing support within the community on a multidisciplinary basis. The main goal of accompaniment is to strengthen over time the ability of individuals and families to deal with the disappearance of their relatives and to recover a healthy social life and emotional well-being. ICRC, in cooperation with local partners and with the support of concerned authorities, currently runs several accompaniment projects in Armenia, Azerbaijan, Georgia, Nepal and Timor-Leste. In 2011, internal evaluations carried out in Georgia and Nepal showed that families themselves were able to identify and express the positive impact that such support has on their lives, including as a result of the holistic response to the various needs of the family members.

IX. Conclusions and recommendations

78. Resolution 65/210 is primarily concerned with the issue of persons reported missing in connection with armed conflict. The contributions received for the present report addressed an array of legal and policy measures that can apply in contexts of both armed conflict and other situations of violence and insecurity. The entry into force of the International Convention for the Protection of All Persons from Enforced Disappearance is a highly significant step in the development and strengthening of the applicable normative framework. I strongly encourage States that have not yet become parties to such an important instrument to take the necessary measures to do so, to incorporate its provisions into domestic law and to ensure full implementation of those provisions by the relevant authorities.

79. States involved in and parties to an armed conflict are obliged to take all appropriate legislative or institutional measures to prevent persons from going missing. It is important to ensure that the proper means of identification are used by the members of armed forces and that a means of personal identification is provided for children, in the light of their particular vulnerability.

80. Mechanisms must also be established at the national level to ensure the prevention of missing persons and enforced disappearances and to effectively address cases of missing and disappeared persons. While a few contributions pointed to measures addressing children, the specific issue of children missing in connection with armed conflict requires greater attention.

81. Ensuring accountability in cases of missing and enforced disappeared persons is a preventative measure and a measure of redress. States are obliged to ensure the effective investigation and prosecution of such cases. Accountability can also be pursued through non-judicial truth seeking mechanisms, including in the context of transitional justice processes. International commissions of inquiry constitute an important mechanism through which cases of missing or disappeared persons can be documented and recommendations made to national authorities.

82. In the area of forensic recovery and identification, a number of positive developments have contributed to improvements in national forensic capacities in some countries and to enhanced cooperation in the use of forensic science for the prevention and investigation of missing persons. The promotion and development of local forensic capacity in line with applicable forensic good practices should continue, including through regional initiatives.

83. The societal impact of missing and disappeared persons is considerable and multidimensional and cannot be ignored. In that regard, there has been notable progress in the recognition that families should be placed at the centre of all actions taken in response to missing and disappeared persons and in the development of approaches and initiatives to ensure that families receive proper care and support. However, there is scope for more engagement by States and relevant governmental and non-governmental organizations to ensure that the rights of the families of missing and disappeared persons are protected and respected at all times, and that their needs are addressed in a comprehensive and holistic manner. In that regard, cooperation and

collaboration is important between the mechanisms engaged in supporting and addressing the needs of witnesses. In addition, minimum standards for psychological work should be considered when elaborating policies for dealing with victims, including with regard to the search for and identification of missing and disappeared persons and related forensic investigations.